

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROGER FRANET
and LARRY NEIL SMITH

Appeal No. 2003-0707
Application 09/690,534

ON BRIEF

Before STAAB, MCQUADE, and BAHR, Administrative Patent Judges.
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Roger Franet et al. originally took this appeal from the final rejection of claims 1 through 5 and 9 through 12. As the examiner has since withdrawn the rejection of claim 12, the appeal as to this claim is hereby dismissed, leaving for review the standing rejections of claims 1 through 5 and 9 through 11. Claim 12 presumably now stands objected to, along with claims 6 through 8, the only other claims pending in the application, as depending from a rejected base claim.

THE INVENTION

The invention relates to a self-propelled agricultural vehicle which is defined in representative claim 1 as follows:

1. In a self-propelled agricultural vehicle having a chassis supported on front and rear sets of wheels, and at least one working unit being attached to a side of the chassis by a support arm movable between a lowered working position and a raised transport position, and an actuator coupled between the chassis and said arm for moving the latter between said working and transport positions, the improvement comprising: a coupling structure mounting an inner end of said support arm to said chassis at a location inwardly of an outer surface of one of said wheels of one of said front and rear sets of wheels; said support arm being so configured and located relative to said one of said front and rear sets of wheels that said working unit is moved to a position occupying space vertically above a respective wheel of said one of said front and rear sets of wheels when said arm is moved to said transport position.

THE REJECTION

Claims 1 through 5 and 9 through 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,715,667 to Goman et al. (Goman).

Attention is directed to the brief (Paper No. 13) and answer (Paper No. 14) for the respective positions of the appellants and examiner regarding the merits of this rejection.¹

¹ In the final rejection (Paper No. 8), claims 1 through 5 and 9 also stood rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,280,695 to Nunes, Jr. et al. and claim 12 stood rejected under 35 U.S.C. § 102(b) as being anticipated by Goman. On consideration of the arguments advanced

DISCUSSION

Goman discloses a vehicle 12 having a front mower deck 14, left and right wing mower decks 16 and 18, and mechanisms 10 for mounting the wing mower decks to the vehicle for movement between lowered operating positions and upper transport positions. As best shown in Figures 2 through 4, each mounting mechanism includes, inter alia, a push arm 24, a first arm member 30, a first pivot mechanism 32 having a shaft 36, a second arm member 40, a second pivot mechanism 46 having a shaft 48, a third arm member 58, a third pivot mechanism 60 having a shaft 62, a hydraulic lift cylinder 72, a lever member 74, a strap 76 having a slot 78, a lift pin 80 and a link member 82. As described by Goman with respect to mower deck 18,

[d]uring normal mowing operations, the mower deck 18 is lowered to the ground

When the operator wishes to raise the deck 18 such as to pass over an obstruction or to latch the deck 18 in its transport position, the operator must first actuate the hydraulic lift cylinder 72. As the cylinder 72 extends, the lever member 74 will pivot from the position shown in FIG. 2 counterclockwise about its pivotal connection to the second member 40. This causes the upper end of the lever 74 to shift to the left as viewed in FIG. 2, which also pulls the strap 76 to the left. As the cylinder 72 is extended the strap 76 will shift toward the vehicle 12 until the end of the slot 78 abuts against the lift pin 80. As

in the main brief, the examiner has withdrawn these rejections (see page 8 in the answer).

the cylinder 72 continues to extend, the strap 76 will raise the push arm 24, causing the first member 30, push arm 24 and mower deck 18 to pivot upwardly about the first pivot mechanism 32. As the first member 30 pivots about the first shaft 36, the first member 30 will eventually abut against the second member 40 as shown in FIG. 3, which blocks the first member 30 from pivoting further about the first shaft 36. Once this occurs, the first and second members 30 and 40, first pivot mechanism 32, push arm 24 and mower deck 18 begin pivoting upwardly together about the second shaft 48.

The link member 82 and third pivot mechanism 60 function to swing the wing deck 18 rearwardly during the lifting operation after the first member 30 has contacted the second member 40. As shown in FIG. 4, the generally rigid link member 82 extends between point A on the vehicle frame 64 and point B on the second member 40. The link member 82 provided by the present invention blocks the second member 40 from pivoting straight upwardly along line C, and causes point B to swing rearwardly along arc D. The link 82 maintains point B at a constant distance from point A, and thereby prevents point B from shifting straight upwardly along line C. Point B will remain a constant distance from point A as point B travels along arc D. The second member 40 pivots counterclockwise from its position shown in FIG. 5 about the axis defined by the third shaft 62 to allow point B to swing through the arc D. As the deck 18 is fully raised to its transport position it will pivot rearwardly about the axis defined by the third shaft 62 until the mounting mechanism 10 pivots to the position shown in FIG. 6 [column 4, line 65, through column 5, line 59].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

As indicated above, independent claim 1 requires the vehicle recited therein to comprise a support arm

configured and located relative to said one of said front and rear sets of wheels that said working unit is moved to a position occupying space vertically above a respective wheel of said one of said front and rear sets of wheels when said arm is moved to said transport position.

The examiner's finding of general correspondence between this support arm and working unit and Goman's push arm 24 and mower deck 18, respectively, is reasonable on its face and has not been disputed by the appellants. Goman, however, does not expressly teach whether or not the mower deck 18 is moved to a position occupying space vertically above a wheel when the push arm 24 is moved to the transport position. Given this lack of explicit disclosure, the examiner and appellants have advanced conflicting analyses respectively concluding that Goman does and does not disclose this feature under principles of inherency.

A careful evaluation of these positions shows that each rests in large part on unfounded conjecture. For example, while the examiner is correct that the mower deck 18 must clear the nearest wheel in order to move to the transport position shown in Figure 3, this does not necessarily mean, nor does Figure 3 show, that in the transport position the mower deck will occupy space

vertically above the wheel. The fact that the mower deck, when moving to the transport position, swings rearwardly about the third pivot mechanism 60 to an extent not clearly shown or described makes any determination of this sort speculative at best. Under this scenario, the examiner's rejection must fall. Goman's disclosure simply does not provide the factual basis necessary to determine whether or not the mower deck 18 is moved to a position occupying space vertically above a wheel when the push arm 24 is moved to the transport position. This ambiguity is fatal to the rejection at hand as it is well established that an anticipation rejection cannot be predicated on an ambiguous reference. In re Turley, 304 F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962).

Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of independent claim 1 and dependent claims 2 through 5 and 9 through 11 as being anticipated by Goman.

SUMMARY

The decision of the examiner to reject claims 1 through 5 and 9 through 11 is reversed.

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REVERSED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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)	APPEALS AND
JOHN P. MCQUADE)	
Administrative Patent Judge)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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